No. 477

OCT 3 1956
JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1956

PHOENIX INDEMNITY COMPANY, INSURER,
PETITIONER,

v.

LUCIEN LAVOIE, EMPLOYEE,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS FOR SUFFOLK COUNTY

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TABLE OF CONTENTS.

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	2
Statement	3
How the Federal Questions Were Raised	5
Reasons for the Allowance of Writ	5
I.	5
II.	9
III.	9
Conclusion	10
Appendix A. Opinion of Supreme Judicial Court of Massachusetts	11
Appendix B. Decision of Rhode Island Department of Labor	20

Table of Cases Cited.

Ida Cresci v. *Home for Aged Women*, 82 R.I.—, 112 A.2d 874	6
Magnolia Petroleum Co. v. *Hunt*, 320 U.S. 430	10
Industrial Commission of Wisconsin v. *McCartin*, 330 U.S. 622	8
Grinnell v. *Wilkinson*, 39 R.I. 447, 98 A. 103	9

Table of Constitutional and Statutory Provisions Cited.

U. S. Constitution, Article IV, Section 1	2
General Laws of Rhode Island, Chapter 300, Article 1, Section 6	3, 7
Texas Revised Statutes, Article 8306, Section 6	7
Illinois Revised Statutes, 1943, Chapter 48, Section 143	8

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Phoenix Indemnity Company, insurance carrier, prays that a Writ of Certiorari issue to review the rescript of the Supreme Judicial Court of the Commonwealth of Massachusetts entered July 6, 1956, reversing the final decree of the Superior Court of the Commonwealth of Massachusetts for Suffolk County.

Opinions Below

The opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts, set forth in Appendix A hereto, is reported in 334 Mass. — (1956 Mass. A.S. 923) and in 135 N.E. 2d 750.

Jurisdiction

The rescript of the Supreme Judicial Court of Massachusetts was entered July 6, 1956. The jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (3) since petitioner's rights are adversely affected by the refusal of the Supreme Judicial Court of Massachusetts to give full faith and credit to an award made to the employee under the workmen's compensation act of the State of Rhode Island. Article IV, Section 1 of the Federal Constitution requires that each of the states give full faith and credit to the official acts, records and judicial proceedings of every other state.

Questions Presented

Whether, by reason of the full faith and credit clause of the Federal Constitution, an award by the State of Rhode Island under its workmen's compensation law to an employee is a bar to a recovery by that employee of an additional award under the workmen's compensation law of the Commonwealth of Massachusetts for the same injury.

(i) Where the employee accepted and is now receiving the payments and benefits under the Rhode Island act,

(ii) Where the employee did not appeal from the Rhode Island award.

Constitutional and Statutory Provisions Involved

Article IV, Section 1 of the Federal Constitution provides in pertinent part as follows:

> "Full Faith and Credit shall be given in each state to the public Acts, Records and Judicial Proceedings of every other state. . . ."

Chapter 300, Article I, Section 6, as amended, of the General Laws of Rhode Island, 1938 Edition, provides in pertinent part as follows:

> "The right to compensation for an injury and the remedy therefor granted shall be in lieu of all rights and remedies as to such injury now existing, either at common law, or otherwise. Such remedies shall not accrue to employees entitled to compensation under this chapter while it is in effect."

Statement

Lucien Lavoie, the employee, sustained injuries in the Commonwealth of Massachusetts which arose out of and in the course of his employment with Metals Processing Company. The contract of hire was made in Rhode Island where the employee resided and his services were performed primarily in that state; any work performed elsewhere was merely incidental to the main employment in Rhode Island. Phoenix Indemnity Company is the insurance carrier of the employer in both states.

The employer initiated proceedings for compensation to the employee with the Department of Labor of Rhode Island, which has jurisdiction of workmen's compensation cases. The employee submitted to the jurisdiction of the Department of Labor of Rhode Island, and compensation was awarded him, as provided in Rhode Island, by the Director of Labor. No appeal was taken by the employee from the determination of the Director of Labor ordering the employee his award for the injuries sustained under applicable workmen's compensation laws of Rhode Island. The employee has been receiving the compensation awarded him under the laws of Rhode Island. A short time after the

determination and entry of the award by the Director of Labor, the employee brought proceedings before the Industrial Accident Board of the Commonwealth of Massachusetts (which has jurisdiction of workmen's compensation cases) to obtain compensation under the laws of the Commonwealth of Massachusetts. The Industrial Accident Board denied the employee's claim for compensation, basing its denial on its lack of jurisdiction over the matter, since the contract of employment was entered into in the State of Rhode Island and any work performed out of that state was merely incidental thereto. An appeal by the employee, as provided by applicable Massachusetts law, was taken to the Superior Court of the Commonwealth of Massachusetts for Suffolk County from this denial of his claim by the Industrial Accident Board. The Superior Court entered a final decree dismissing the employee's claim under the Massachusetts Workmen's Compensation Act (G.L. Ter. Ed. Chapter 152). This decree of dismissal was based in pertinent part on the holding that full faith and credit had to be given to the decision of the Rhode Island Department of Labor which had previously awarded compensation to the employee.

The employee then further appealed to the Supreme Judicial Court of Massachusetts which reversed the decree of the Superior Court, holding that the Rhode Island award is no bar to recovery under the Massachusetts Workmen's Compensation Act, i.e. that the full faith and credit clause of the Constitution does not prevent the Massachusetts Industrial Accident Board from awarding compensation to an employee in addition to that which had already been awarded to the same employee for the same injury under the Rhode Island Workmen's Compensation Act.

How the Federal Questions Were Raised

In the appeal by the employee to the Superior Court of the Commonwealth of Massachusetts for Suffolk County from the denial of his claim by the Industrial Accident Board, that court entered a final decree sustaining the denial of the employee's claim for compensation under the Massachusetts Workmen's Compensation Law based on a holding that the full faith and credit clause of the Federal Constitution prevented it from granting the remedy which the employee was seeking in that court. This issue was raised and argued in the proceedings of the Superior Court.

The issue involving the full faith and credit clause of the Federal Constitution (Article IV, Section 1) was again raised and argued by the parties in the appeal to the Supreme Judicial Court of the Commonwealth of Massachusetts. The Supreme Judicial Court, in reversing the decree of the Superior Court, decided that it was not bound by the restrictions of the full faith and credit clause and that additional compensation could be awarded to the employee for the same injury.

Reasons for the Allowance of Writ

I. The Supreme Judicial Court of Massachusetts in reversing the decree of the Superior Court stated in part as follows:

> "No provision of the Rhode Island compensation act has been brought to our attention, and we have found none, which would accord to the award before us the effect that the Texas law gave to the award which was involved in the Magnolia Petroleum case and which was held to be entitled to full faith and credit in another state. Nor has any decision been brought to

> our attention which so construes the Rhode Island act. In short, we are unable to say on the basis of our study of the Rhode Island law that it was designed to make an award there exclusive so as to preclude the recovery of an award under any other act."

Petitioner contends that the law and facts of the instant case do make the award given in Rhode Island exclusive so as to preclude the recovery of an additional award under the laws of the Commonwealth of Massachusetts. No appeal was taken from the determination and order of the Director of Labor by the employee in this case. The import of Rhode Island law is that this adjudication by the Director of Labor is final and while in effect has the same standing as a judgment or decree of a Rhode Island court.

> *Ida Cresci* v. *Home for Aged Women,* 82 R.I. —, 112 A.2d 874.

In proceeding under Rhode Island law to obtain an award for his injuries, the employee was bound by Chapter 300, Article I, Section 6 of the General Laws of Rhode Island wherein he was compelled to make a binding election. The award granted to him by the Director of Labor was expressly made in lieu of all his rights and remedies as to that injury. By the express terms of this statute he was required to forego not only any common law rights which he may have had, but also any other rights removed from common law considerations which he may have had either in Rhode Island or elsewhere. An examination of this Rhode Island statute reveals that the Rhode Island Legislature was specifically providing for a remedy for employees' injuries with the specific intent that the employee would not only have to give up his common law remedies but also any other remedy, whatever it might be. We at-

tach considerable significance to the inclusion of the phrase "or otherwise" as found in the Rhode Island statute as set forth below.

> "The right to compensation for an injury and the remedy therefor granted shall be in lieu of all rights and remedies as to such injury now existing, *either at common law, or otherwise.* Such remedies shall accrue to an employee entitled to compensation under this chapter while it is in effect."

We believe that the Rhode Island Legislature by making reference in this statute to possible remedies in addition to common law remedies was imposing a prohibition on employees that no other remedy except that found in the Workmen's Compensation Act of Rhode Island shall apply where the injuries of workmen arise out of and in the course of their employment.

We are unable to discern a distinction between the holding of this Court in the case of *Magnolia Petroleum Co.* v. *Hunt,* 320 U.S. 430, from the case herein. In the *Magnolia* case the applicable Texas statute reads in pertinent part as follows:

> ". . . shall have no right of action against their employer or against any agent, servant or employee of said employer for damages for personal injuries . . . but such employees . . . shall look for compensation solely to the association (the insurer). . . . A compensation award which has become final is entitled to the full faith and credit as a judgment of a court." Texas Revised Statutes, Article 8306, Section 6.

The Rhode Island statute and the Texas statute both concern themselves with the limitation of remedy to the injured workman. They are both designed to curtail any

other remedies which an injured workman could conceivably have, either in his home state or in the state where the injury occurred. We read the phrase "in lieu of all rights and remedies as to such injury now existing, either at common law, or otherwise" as foreclosing any other conceivable remedy which the employee may otherwise have.

The Supreme Judicial Court of Massachusetts concludes that it is governed by *Industrial Commission of Wisconsin* v. *McCartin*, 330 U.S. 622, in which case this Honorable Court found that a workmen's compensation award under the Illinois statute was not intended to be final and conclusive of the employee's rights and did not preclude an additional award under the workmen's compensation act of Wisconsin. The provision of the Illinois workmen's compensation act is markedly different from the provisions of the Rhode Island act with which we are herein concerned.

> "No common law or statutory right to recover damages for injury or death sustained by any employe while engaged in the line of his duty as such employe, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this Act, . . ." Illinois Rev. Stat. 1943, Chapter 48, section 143.

A comparison of the Illinois and Rhode Island statutes reveals that the Illinois statute does not contain the broad dimensions found in the Rhode Island statute. The Illinois statute is designed merely to spell out the rights of an employee while engaged in the line of his duty. There is no phraseology in the Illinois statute which was intended to cover any claim but that made under the Illinois workmen's compensation law. The exclusiveness of the Illinois act is in regard to the sole remedy provided in that state

against the employee under Illinois common law or under the Illinois Personal Injuries Act.

Petitioner contends that the reliance by the Supreme Judicial Court of Massachusetts on the *McCartin* case was erroneous in that the Rhode Island act is significantly different. The Rhode Island act specifically contemplates the possibility of other rights and remedies in addition to the classical common law ones which the employee is required to relinquish when resort is made to the workmen's compensation act of that jurisdiction.

II. In *Grinnell* v. *Wilkinson*, 39 R.I. 447, 98 A. 103, the Supreme Court of Rhode Island held that the workmen's compensation act of Rhode Island applies to injuries arising out of the state as well as to injuries arising within the state. It may be inferred that since the Rhode Island Legislature was aware of the extra-territorial effect of the workmen's compensation law, the inclusion and retention in the Rhode Island statute of the phraseology "in lieu of all rights and remedies as to such injury now existing, either at common law, or otherwise" is intended to refer to the rights and remedies which a Rhode Island employee might have as a result of an injury occurring in another state. In fact, we are at a loss to understand any other reason for the inclusion of the phrase "or otherwise".

III. The refusal of the Massachusetts Court to apply the doctrine of full faith and credit to an award made in Rhode Island, which is deemed to be final and exclusive in Rhode Island, seriously prejudices your petitioner's rights. Your petitioner has been required to litigate a single cause of action in two different forums. This it believes to be contrary to law. Your petitioner will be unable to gain relief unless this court grants the writ. The question herein involves an important federal question to many insurance

companies, similar to the petitioner, who do business in various states. It is imperative to them and to the petitioner to know the extent and restrictions of the full faith and credit clause of the Federal Constitution with reference to the problem set forth herein. The frequency of having workers hired in one state and carrying out some or all of their duties in another state would appear to be on the increase in our increasingly mobile economy. As a result of the doctrines enunciated in the *McCartin* and the *Magnolia Petroleum* cases by this court, serious questions have arisen in the application of these doctrines to specific statutes of the various states. We feel that a hearing on the merits in the instant case would do much to clarify and crystallize the application of these doctrines so that your petitioner and others in a similar business may be better guided to perform their services to the public. Further, the interest and concern of employees in this problem would seem to be self evident.

Conclusion

For the foregoing reasons, this petition for certiorari should be granted.

Respectfully submitted,

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Boston, Massachusetts
Attorney for Petitioner.

Appendix A

OPINION OF THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

SPALDING, J. On November 27, 1951, the employee was seriously injured while working for his employer on a job in Seekonk, Massachusetts. The contract of hire was made in Rhode Island, where the employee resided, and his services were to be performed primarily in that State; any work performed elsewhere was merely incidental to the main employment in Rhode Island. When called upon to do work in Massachusetts he would receive his instructions in Rhode Island and would return there each night. The employer was insured in both Rhode Island and Massachusetts. It is agreed that the employee's injuries arose out of and in the course of employment.

The employer filed a petition with the department of labor of Rhode Island (which has jurisdiction over workmen's compensation cases) in which it conceded that the employee's injuries arose out of and in the course of his employment, and stated that the employee had refused to execute an agreement for compensation in accordance with the compensation act of Rhode Island. The petition asked that the department hear the parties, decide whether it had jurisdiction of the controversy, and determine the amount payable to the employee. The employee admitted the facts alleged in the petition, but reserved the right to proceed under the compensation act of this Commonwealth. On April 15, 1952, the department of labor rendered a decision to the effect that it had jurisdiction, and awarded compensation to the employee. In its decision, from which the employee did not appeal, nothing was said about the employee's reservation of rights. It was conceded at the argu-

ments before us that the employee has been receiving compensation under the Rhode Island award.

In May of 1952 the employee instituted the present proceedings before the Industrial Accident Board to obtain compensation under the laws of this Commonwealth. At a hearing before the single member there was little or no dispute as to the facts and all of those recited above were either agreed to by the parties or found by him. He ruled that inasmuch as the employee's injuries, although occurring in Massachusetts, arose out of a contract of hire made in Rhode Island, the Industrial Accident Board was without jurisdiction in the matter. The decision of the single member was affirmed by the reviewing board. In the Superior Court a decree was entered reciting (1) that the employee sustained an injury in this Commonwealth which arose out of and in the course of his employment pursuant to a contract of employment made in Rhode Island; (2) that the Industrial Accident Board was without jurisdiction to award additional compensation; (3) that full faith and credit be given to the decision of the Rhode Island department of labor of April 15, 1952, and (4) that the employee's claim be dismissed. The employee appealed.

At the outset it shauld be stated that the employee is not seeking double compensation. Obviously, he ought not to recover full compensation under both compensation acts. *McLaughlin's Case,* 274 Mass. 217, 222. *Migues's Case,* 281 Mass. 373, 375. *Mizrahi's Case,* 320 Mass. 733. Restatement: Conflict of Laws, § 403, 1948 Sup. At the arguments before us the employee conceded that any sums received under the Rhode Island award should be credited to any award that he might receive under our act. His reason for making a claim here is that in some respects our act is more favorable to him than the Rhode Island act.

We first must decide whether an employee who receives an injury here in the course of his employment while per-

forming work under a contract of hire made in another State can recover compensation under our act. If the answer to this question is in the negative that is an end of the matter. But if we give an affirmative answer to it we are then called upon to decide whether by reason of the full faith and credit clause of the Federal Constitution the award in Rhode Island is a bar to recovery here.

1. We are of opinion that an employee, as here, who suffers injury in this Commonwealth arising out of and in the course of his employment while performing work under a contract of hire made in another State where he was principally employed can recover under our act. Although there is an intimation to this effect in *Gould's Case*, 215 Mass. 480, it does not appear that this question has heretofore been decided by this court. In *Gould's Case*, this court, in construing our compensation act as it then stood, denied compensation under our act to a resident of the Commonwealth who was principally employed here under a Massachusetts contract of hire and who suffered injury in the course of his employment while temporarily working in another State. In 1927 the holding of *Gould's Case* was abrogated by an amendment of the statute. Section 26 of G. L. c. 152 was amended so as to provide compensation for an employee who receives a personal injury arising out of and in the course of his employment "whether within or without the commonwealth." St. 1927, c. 309, § 3. Since that amendment it has uniformly been held that an employee working under a Massachusetts contract of hire may receive compensation here for injury sustained while temporarily employed in another State. *Pederzoli's Case*, 269 Mass. 550. *McLaughlin's Case*, 274 Mass. 217. *Migues's Case*, 281 Mass. 373. *Wright's Case*, 291 Mass. 334. *Bauer's Case*, 314 Mass. 4. But the insurer argues that these cases are authority for the proposition that there can be recovery

under our act if, but only if, the contract for hire was in Massachusetts. We do not agree.

As the cases just cited show, the fact that the contract of hire was made here affords a basis for recovery here with respect to an out-of-State injury. But they do not hold that there can be no recovery here with respect to an injury occurring here in the performance of a contract of employment made elsewhere. In construing our act as it stood prior to the 1927 amendment Chief Justice Rugg said that it "disclose[d] no purpose to exempt from its operation non-resident employees of alien employers who while working within this Commonwealth may receive personal injuries arising out of and in the course of employment." *Gould's Case*, 215 Mass. 480, 485. Although that statement was made by way of dictum we think it is a correct interpretation of our act as it then stood. No change in this respect was effected by the 1927 amendment. The intent of the Legislature in enacting that amendment was to enlarge, not restrict, the scope of the act. What was permissible before the amendment could be done thereafter. Moreover, to deny a remedy to an employee in a case like the present would often have undesirable consequences. It might frequently be more difficult for him to prove his case in the State where the contract was made than in the State of injury, where he would have the benefit of witnesses who could establish the fact of injury. And there is always the possibility that an employee injured here, if remediless, might become a public charge. We find nothing in the act itself or in the decisions construing it that calls for the interpretation for which the insurer contends. We might add that under the prevailing view elsewhere compensation acts have been construed to permit recovery in the State of injury though the contract of hire was made in another State. See Goodrich, Conflict of Laws, 286.

Our belief in the correctness of the foregoing conclusion

is re-enforced by a carefully considered and well reasoned opinion by the Court of Appeals for the First Circuit which interpreted our act as covering an employee who was injured here, although the contract of hire was made elsewhere. *Bagnel* v. *Springfield Sand & Tile Co.*, 144 Fed. (2d) 65.

No constitutional difficulty arises from this construction. A State may give compensation under its act both in cases where the contract of hire was made within the State and the injury occurred elsewhere. *Alaska Packers Association* v. *Industrial Accident Commission of California*, 294 U. S. 532, and in cases where the jury was sustained within the State, though the contract of hire was made elsewhere, *Pacific Employers Ins. Co.* v. *Industrial Accident Commission*, 306 U. S. 493. That this Commonwealth has a legitimate interest which would justify it in providing compensation to employees injured within its borders while working under a contract of employment made elsewhere cannot be doubted. As was said in the case last cited, "Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power" (page 503).

2. The employee has obtained an award under the compensation act of Rhode Island, and we must decide whether this constitutes a bar to the present proceeding by reason of the full faith and credit clause (art. 4, § 1) of the Federal Constitution. Relying on *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, the insurer earnestly argues that the Rhode Island award precludes recovery here. There a resident of Louisiana while working in Texas under a contract of employment made in Louisiana suffered a compensable injury. After seeking and procuring an award in Texas under its workmen's compensation law, the employee, upon returning to Louisiana, discovered that he could obtain more liberal benefits under the Louisiana compensation act, and sought

further relief in the courts of that State. The employer contended that the employee was barred from recovering in Louisiana on the ground that the Texas award was res judicata and was entitled to full faith and credit under the Federal Constitution. This contention was rejected and the court gave judgment for the amount fixed by the Louisiana statute, after deducting the amount of the Texas payments. On certiorari this judgment was reversed by the Supreme Court of the United States in a five to four decision. It appeared that under Texas law a compensation award was res judicata and was entitled to the same faith and credit as a judgment of a court. The court held that the employee was free to pursue his remedy in either State but, having chosen to seek it in Texas, where the award was res judicata, the full faith and credit clause precluded him from again seeking a remedy in Louisiana upon the same grounds.

The employee relies on *Industrial Commission of Wisconsin* v. *McCartin*, 330 U. S. 622, which was decided four years after the *Magnolia Petroleum Co.* case. In that case a resident of Illinois employed by an Illinois employer under a contract of hire made in Illinois was injured while performing work in Wisconsin pursuant to the contract. He received compensation under the Illinois workmen's compensation act in these circumstances. A settlement contract was entered into between the employee and the employer calling for a lump sum settlement which was approved by one of the members of the Illinois Industrial Commission. The settlement contract, which became the award, contained a provision that "This settlement does not affect any rights that applicant may have under the workmen's compensation act of the State of Wisconsin." Subsequently the employee applied for compensation under the more liberal Wisconsin statute. The question for decision was whether the award in Illinois by reason of the full faith and credit clause was a bar to a subsequent award in

Wisconsin. The court said, "If it were apparent that the Illinois award was intended to be final and conclusive of all the employee's rights against the employer and the insurer growing out of the injury, the decision in the *Magnolia Petroleum Co.* case would be controlling here" (page 626). The court then proceeded to analyze the Illinois statute and reached the conclusion that the Illinois award was different from the Texas award in that it was not intended to be final and conclusive of the employee's rights and did not preclude an award under the Wisconsin act. The court observed that "in light of the rule that workmen's compensation laws are to be liberally construed in furtherance of the purpose for which they were enacted . . . we should not readily interpret such a statute so as to cut off an employee's right to sue under other legislation passed for his benefit. Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction"[1] (page 628).

Prior to the *Magnolia* and *McCartin* cases the Restatement: Conflict of Laws, § 403, read: "Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, but the amount paid on a prior award in another state will be credited on the second award." Following these decisions § 403 was changed so as to read as follows: "Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, *unless the Act where the award was made was designed to*

[1] The court also rested its decision on the provision in the settlement agreement saving the rights of the employee under the Wisconsin act. "But when the reservation in this award is read against the background of the Illinois Workmen's Compensation Act, it becomes clear that the reservation spells out what we believe to be implicit in that Act—namely, that an Illinois workmen's compensation award of the type here involved does not foreclose an additional award under the laws of another state" (page 630).

preclude the recovery of an award under any other Act, but the amount paid on a prior award in another state will be credited on the second award" (italics supplied). The clause in italics was added.

In comment a following the reworded § 403 it is stated that "The interest of more than one state in the employer-employee relationship enables each of them to provide its own statutory remedy. A state may declare by statute or decisions thereunder that if its remedy is pursued to judgment, it shall be exclusive. In the absence of any such declaration, however, the recovery of judgment under the Act of one state does not bar the recovery of judgment under the Act of another state."[2] Restatement: Conflict of Laws, 1948 Sup. See Goodrich, Conflict of Laws, § 100; Larson, Workmen's Compensation Law, §§ 85.10-85.70.

With the foregoing principles in mind we turn to the law of Rhode Island. No provision of the Rhode Island compensation act has been brought to our attention, and we have found none, which would accord to the award before us the effect that the Texas law gave to the award which was involved in the *Magnolia Petroleum* case and which was held to be entitled to full faith and credit in another State. Nor has any decision been brought to our attention which so construed the Rhode Island act. In short we are unable to say on the basis of our study of the Rhode Island law that it was designed to make an award there exclusive so as to preclude the recovery of an award under any other act. Our conclusion is, therefore, that the case at hand is governed by the *McCartin* case rather than the *Magnolia* case and that the Rhode Island award is no bar to a recovery

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[2] Recent cases in other jurisdictions applying the foregoing principles are *Cline* v. *Byrne Doors, Inc.* 324 Mich. 540, *Cook* v. *Minneapolis Bridge Construction Co.* 231 Minn. 433, *Baduski* v. *S. Gumpert Co. Inc.* 277 App. Div. (N.Y.) 591, and *Spietz* v. *Industrial Commission,* 251 Wis. 168.

under our act. Credit, of course, should be given for any sums received by the employee under the Rhode Island award. *McLaughlin's Case,* 274 Mass. 217, 222.

3. A question of practice remains. General Laws (Ter. Ed.) c. 152, § 11, as amended by St. 1950, c. 634, § 1, provides that "If an employee appeals to the supreme judicial court from a decree of the superior court, the superior court may, upon motion, certify that the appeal raises a substantial question of law, in which event the expense of printing the necessary records, papers and briefs shall be paid from the fund established by section sixty-five." The employee presented a motion in the court below for a certification under this provision and the motion was denied. He contends that this was error. We do not agree. The question raised by the appeal was undoubtedly a substantial question of law and the judge might well have granted the motion. But the statutes leaves the matter to the court's discretion and we cannot say that the judge abused his discreion in denying the motion.

The decree is reversed and a decree is to be entered remanding the case to the Industrial Accident Board for further proceedings in conformity with this opinion.

So ordered.

Rhodes G. Lockwood, for the claimant.

Edward C. Uehlein, for the insurer.

Appendix B

STATE OF RHODE ISLAND
DEPARTMENT OF LABOR
PROVIDENCE, SC. W.C.A. No. 11903

METALS PROCESSING CO.

v.

LUCIEN A. LAVOIE

DECISION

This is a petition for determination.

The matter was assigned for hearing and came on to be heard in the office of the Department of Labor on March 14, 1952.

The Phoenix Indemnity Company is the insurance carrier on this risk.

The petitioner alleges in its petition that it is a duly organized corporation under the laws of the State of Rhode Island and that a contract of employment was entered into in the State of Rhode Island between it and one, Lucien A. Lavoie, a resident of the Town of East Providence, in the State of Rhode Island; that the said Lucien A. Lavoie on November 27, 1951, in the course of his employment sustained certain injuries at the Seekonk Manufacturing Company, in the Town of Seekonk, Commonwealth of Massachusetts; that said injury is a transaction of the spinal cord with dislocation of the vertebrae and other injuries which will probably result in permanent loss of use of both legs; that said injury arose out of and was sustained within the course of the employment of said Lucien A. Lavoie; that his average weekly wages are approximately $62 per week; that the said Lucien A. Lavoie refuses to execute

an agreement for the compensation in accordance with the provisions of the Workmen's Compensation Act.

The petitioner prays that the Department of Labor hear the parties and determine whether or not it has jurisdiction of the foregoing matter and to determine the extent of the injuries and the amount payable to the said Lucien A. Lavoie, and for such other and further relief as circumstances might warrant in accordance with the provisions of the Workmen's Compensation Act.

The respondent in its answer admits the factual allegations of the petition; reserves the right to take proceedings to recover damages against persons other than the employer in accordance with provisions of Article III, Section 20 of the Workmen's Compensation Act of the State of Rhode Island (Chapter 300 of the General Laws of Rhode Island (1938), as amended); and further reserves the right to take proceedings under the Workmen's Compensation Act of the Commonwealth of Massachusetts (Tercentenary Edition), as amended), to claim compensation under the provisions of such statute for the injuries sustained by him on November 27, 1951, and arising out of and in the course of his employment.

The attorney for the petitioner objected to the respondent's reservation of the right to take proceedings under the Workmen's Compensation Act of the Commonwealth of Massachusetts.

The respondent introduced into evidence the medical reports of Dr. David P. Paull of the Cushing Veterans Administration Hospital, dated March 12, 1952, and Dr. M. E. Johnson, dated March 12, 1952.

Dr. Paull states in his report: "An exploratory laminectomy was performed on November 28, 1951, which reveals a fracture of one of the D12 pedicles. The cord was found to be completely transected at that level. Physical examination on admission here revealed complete loss of sensa-

tion below D11 bilaterally, and a small decubital ulcer over the sacrum. Diagnosis: a. Paraphlegia, D-11, secondary to fracture dislocation of D12 on D11. b. Decubital ulcer, sacrum. There is no evidence to lead us to believe that this patient will have any further return of neurologic function."

Dr. Johnson states in his report: "His family was told from the onset the complete story as to prognosis, and they realized that he was permanently paralysed from the waist down."

We find the respondent sustained an injury arising out of and in the course of his employment on November 27, 1951, which caused him to be disabled on the same day.

We find the respondent has lost permanently the use of both of his legs.

We find the respondent is entitled to specific compensation for the loss of use of both legs.

We find the average weekly wage of the respondent to have been $62.

We find we have jurisdiction to hear this case. *William T. Grinnell* v. *Edward Wilkinson*, 39 R.I. 447.

We order payment of total disability compensation in the amount of $28 per week from November 27, 1951.

We order payment of specific compensation for the loss of use of both legs from November 27, 1951 for a period of 600 weeks in the amount of $20 per week.

We order payment of medical, hospital and surgical expenses according to Article II, Section 5 of the Workmen's Compensation Act.

(s) Joseph Rubinstein
Hearing Officer

Approved: (s) Edward I. Friedman
Chief, Division of Workmen's Compensation

Approved: (s) Arthur W. Devine
Director of Labor

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OCTOBER TERM, 1956

No. 477

PHOENIX INDEMNITY COMPANY, INSURER,
PETITIONER,

v.

LUCIEN LAVOIE, EMPLOYEE,
RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX.

	Page
Statutory Provisions Involved	1
Question Presented	2
Statement of the Case	2
1. The Rhode Island Proceeding	3
a. The Employee Reserved His Right to Seek Compensation Under the Massachusetts Act	3
b. The Rhode Island Award Was Not Made In Lieu of All Other Rights	3
2. The Decision of the Massachusetts Supreme Judicial Court	4
Summary of Argument	4
Argument	
I. The Court Has Clearly Defined the Application of the Full Faith and Credit Clause to Workmen's Compensation Awards	5
A. The McCartin and Magnolia Cases	5
B. The McCartin Case Has Been Uniformly Interpreted and Applied	6
II. The Massachusetts Court's Decision Below Was Plainly in Accord with This Court's Decision in the McCartin Case	7
A. The Rhode Island Act	7
B. The Rhode Island Decisions	9
Conclusion	10

Table of Authorities Cited.

Cases.

Baduski v. *S. Gumpert Co., Inc.*, 277 App. Div. 591, 102 N.Y.S. 2d 297 (1951)	6
Cline v. *Byrne Doors, Inc.*, 324 Mich. 540, 37 N.W. 2d 630 (1949)	6

Page

Cook v. *Minneapolis Bridge Construction Co.*, 331 Minn. 433, 43 N.W. 2d 792 (1950) 6

Grinnell v. *Wilkinson*, 39 R.I. 447, 98 Atl. 103 (1916) .. 10

Ida Cresci v. *Home for Aged Women*, 112 A.2d 874 ... 10

Industrial Commission of Wisconsin v. *McCartin*, 330 U.S. 622, 627 ..... 1, 4, 5, 6, 8, 9

Magnolia Petroleum Co. v. *Hunt*, 320 U.S. 430 5

National India Rubber Co. v. *Kilroe*, 54 R.I. 333, 173 Atl. 86 (1934) 9

Pacific Employers Insurance Co. v. *Industrial Accident Commission*, 306 U.S. 493, 504, 505 7

Spietz v. *Industrial Commission*, 251 Wis. 168, 28 N.W. 2d 354 (1947) 6

Statutes.

General Laws of Rhode Island, Chapter 300, Article I, Section 6, 1938 Edition 1, 2

Illinois Revised Statutes, 1943, Chapter 48, Section 143 5

Textbooks

Goodrich, *Conflict of Laws*, §100 6-7

Larson, *Workmen's Compensation Law*, §§85.10-85.70 7

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Statutory Provision Involved

At page 3 of the petition, there is quoted what is described as the "pertinent part" of Chapter 300, Article I, Section 6, as amended, of the General Laws of Rhode Island, 1938 Edition. Because the quotation is inaccurate as well as incomplete, and because in this case the exact language of the statute is of crucial importance (*Industrial Commission of Wisconsin* v. *McCartin*, 330 U.S. 622, 627), the correct and complete wording of section 6 is set forth below. The words omitted by the petitioner are italicized.

"The right to compensation for an injury and the remedy therefor granted *by this chapter* shall be in lieu of all rights and remedies as to such injury now existing, either at common law, or otherwise; *and* such *rights and* remedies shall not accrue to employees entitled to compensation under this chapter while it is in effect."

Question Presented

Whether, under the full faith and credit clause of the United States Constitution, the Massachusetts Industrial Accident Board may award compensation to an employee injured in that state, where,

(a) the employee is receiving benefits under an award of compensation by the Rhode Island Department of Labor, but

(b) there is nothing in the applicable provision of the Rhode Island Workmen's Compensation Act or in the decisions thereunder to indicate that it is designed to preclude recovery under the act of any other state.

Statement of the Case

The respondent accepts, in the main, the petitioner's statement of the case. However, in three instances the petitioner has characterized the proceedings below in language which requires further explanation in the interest of accuracy and clarity.

1. THE RHODE ISLAND PROCEEDING.

a. *The Employee Reserved His Right To Seek Compensation Under the Massachusetts Act.*

The petitioner has stated (Pet. 3), that when the *employer* sought an award of compensation to the employee under the Rhode Island Workmen's Compensation Act, the employee "submitted to the jurisdiction of the Department of Labor of Rhode Island." What the quoted words mean, or are intended to signify is not clear.

There is no ambiguity in the record. The decision of the Rhode Island Hearing Officer, as approved by the Director of Labor, is set forth at pages 20-22 of the petition. The decision states that the employee filed an answer to the Rhode Island petition, admitting the factual allegations but "reserv[ing] the right to take proceedings under the Workmen's Compensation Act of the Commonwealth of Massachusetts . . . to claim compensation under the provisions of such statute."

b. *The Rhode Island Award Was Not Made In Lieu Of All Other Rights.*

The employer objected to the employee's reservation of his right to seek compensation under the Massachusetts act (Pet. 21). The decision notes both the reservation and objection but no comment, finding or ruling is made with respect to them. Certainly there is nothing in the decision, or elsewhere in the record, which could possibly justify the petitioner's statement that: "The award granted to him by the Director of Labor was expressly made in lieu of all his rights and remedies as to that injury." (Pet. 6).

2. The Decision of the Massachusetts Supreme Judicial Court.

The petitioner has said in its "Statement" that the Supreme Judicial Court of Massachusetts held that the Massachusetts Industrial Accident Board was not barred from awarding compensation "in addition to" that awarded to the employee in Rhode Island (Pet. 4). A similar statement appears at page 5 of the petition. Both are misleading. The Massachusetts court did hold that "the Rhode Island award is no bar to a recovery under our act" (Pet. 18, 19). However, the court added: "Credit must be given for any sums received by the employee under the Rhode Island award" (Pet. 19). Accordingly, while the employee would receive a more favorable award under the Massachusetts act (Pet. 12), there is no question here of double recovery.

Summary of Argument

There is a short and conclusive answer to this petition for certiorari. It is, that the decision below of the Supreme Judicial Court of Massachusetts is in exact conformity to this Court's holding in *Industrial Commission of Wisconsin* v. *McCartin*, 330 U. S. 622, as expressed in Mr. Justice Murphy's opinion for the Court and as uniformly interpreted and applied by other courts and textwriters.

Argument

I. The Court Has Clearly Defined the Application of the Full Faith and Credit Clause to Workmen's Compensation Awards.

A. *The McCartin And Magnolia Cases.*

In *Magnolia Petroleum Co.* v. *Hunt,* 320 U. S. 430, the Court held that Louisiana was barred by the full faith and credit clause from awarding compensation to an employee who had already received under the Texas Workmen's Compensation Act an award which "was made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state." *Industrial Commission of Wisconsin* v. *McCartin,* 330 U. S. 622, 626.

In the *McCartin* case, on the other hand, the Court held that Wisconsin was not barred from awarding compensation to an employee who already had been awarded compensation under the Illinois act. The latter (Ill. Rev. Stat. 1943, c. 48, §143) provided in section 6 that:

> "*No common law or statutory right* to recover damages for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, shall be available to any employee who is covered by the provisions of this act . . ." (Emphasis added).

In holding that Wisconsin was free to make an award, the Court said at page 627:

> "But there is nothing in the statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment . . . Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction."

B. *The McCartin Case Has Been Uniformly Interpreted And Applied.*

There has been no difficulty in applying the rule which was so clearly stated in Mr. Justice Murphy's opinion in the *McCartin* case. The comment of the authors of the Restatement: Conflict of Laws represents the uniform interpretation placed upon the decision by other courts and textwriters:

> "The interest of more than one state in the employer-employee relationship enables each of them to provide its own statutory remedy. A state may declare by statute or decisions thereunder that if its remedy is pursued to judgment, it shall be exclusive. In the absence of any such declaration, however, the recovery of judgment under the Act of one state does not bar the recovery of judgment under the Act of another state." (Restatement, 1948 Supplement, 152.)

In accord are *Cline* v. *Byrne Doors, Inc.*, 324 Mich. 540, 37 N.W. 2d 630 (1949); *Cook* v. *Minneapolis Bridge Construction Co.*, 331 Minn. 433, 43 N.W. 2d 792 (1950); *Baduski* v. *S. Gumpert Co., Inc.*, 277 App. Div. 591, 102 N.Y.S. 2d 297 (1951) and *Spietz* v. *Industrial Commission*, 251 Wis. 168, 28 N.W. 2d 354 (1947). See Goodrich,

Conflict of Laws, §100; Larson, *Workmen's Compensation Law*, §§85.10-85.70.

II. The Massachusetts Court's Decision Below Was Plainly in Accord with this Court's Decision in the McCartin Case.

Applying the decision in the *McCartin* case to the present facts, the Massachusetts Supreme Judicial Court correctly reasoned that the Rhode Island award to this respondent would not bar an award to him under the Massachusetts act unless there was some unequivocal statement in the Rhode Island act, or in the judicial decisions of that state, that the Rhode Island act "was designed to make an award there exclusive so as to preclude the recovery of an award under any other act." (Pet. 18). No such language was brought to the Massachusetts court's attention (Pet. 18) and none has been pointed out in this petition.

A. *The Rhode Island Act.*

A comparison of the corresponding provisions of the Rhode Island and Illinois acts (quoted above at pages 1 and 5 respectively) reveals that both statutes in terms prescribe the rights and remedies available to an injured employee rather than the effect of an award of compensation. However, as the Court said in *Pacific Employers Insurance Co.* v. *Industrial Accident Commission*, 306 U.S. 493, 504, 505, where it held that California was not barred by a similar provision of the Massachusetts act from awarding compensation to an employee hired in Massachusetts and injured in California:

> "Full faith and credit does not here enable one state to legislate for the other or to project its laws across

> state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it."

There being no evidence that the Rhode Island legislature intended to exceed the limits of its constitutional powers, it must be assumed that section 6 of its act was intended to regulate only the rights and remedies available under the laws of Rhode Island and was not intended to have any extra-territorial effect. Thus what was said in the *McCartin* case with respect to the award under the Illinois act applies with equal force to the Rhode Island award in the present case:

> "Since this Illinois award is final and conclusive only as to rights arising in Illinois, Wisconsin is free under the full faith and credit clause to grant an award of compensation in accord with its own laws. *Magnolia Petroleum Co.* v. *Hunt*, supra, thus does not control this case." (330 U.S. 622, 630.)

If one eliminates from the petitioner's argument the conjecture and characterization of which it is mainly composed, there is left only the argument that the words "at common law, or otherwise" in the Rhode Island act mean something so different from the words "common law or statutory" in the Illinois act as to require a different result than that which this Court reached in the *McCartin* case. The petitioner does not say why this should be true, except that it argues that the only sensible meaning which can be attached to the words "or otherwise" is "the rights and remedies which a Rhode Island employee might have as a result of an injury occurring in another state." (Pet. 9). The argument is hardly consistent with the decision of the Rhode Island Supreme Court that at least one purpose of the words "or otherwise" was to exclude

Rhode Island's own statutory right of action for death. *National India Rubber Co.* v. *Kilroe*, 54 R.I. 333, 173 Atl. 86 (1934).

Plainly both common sense and the constitutional necessity to limit the operation of the Rhode Island act to the area of its legitimate concern, require that the words "at common law or otherwise" be given the same meaning as that attributed to the words "common law, or statutory" in the *McCartin* case.

In 1954, there was a general revision of the Rhode Island act. R.I. Acts of 1954, c. 3297. Section 6 was amended so as to read as follows:

> "The right to compensation for an injury [under this chapter] and the remedy therefor granted by this chapter shall be in lieu of all rights and remedies as to such injury now existing, either at common law, or otherwise; and such rights and remedies shall not accrue to employees entitled to compensation under this chapter while it is in effect."

The only change was the addition of the words enclosed in brackets. They can hardly be described as "unmistakable language" indicating that an award under the Rhode Island act shall preclude an award under the act of any other state. *Industrial Commission of Wisconsin* v. *McCartin*, 330 U.S. 622, 627. Accordingly, it can only be inferred that Rhode Island is content to leave to other states the question whether they will award compensation to employees who already have received Rhode Island awards.

B. *The Rhode Island Decisions.*

In support of its argument that a Rhode Island award of compensation precludes an award in any other state,

the petitioner has cited here (Pet. 9), as it did below, the Rhode Island Supreme Court's decision in *Grinnell* v. *Wilkinson*, 39 R.I. 447, 98 Atl. 103 (1916). However, as the petitioner admits (Pet. 9), that case held only that the Rhode Island act "should be construed and held to include injuries arising out of the state as well as those arising within it." *Grinnell* v. *Wilkinson*, supra, at page 462. Neither what that Court held, nor what it said in its opinion, can properly be interpreted as a construction of the Rhode Island act as exclusive or designed to preclude recovery in another state.

The petitioner has also cited *Ida Cresci* v. *Home for Aged Women*, 112 A.2d 874 (R.I. 1955) (Pet. 6). That case adds nothing here. It concerned merely a question with respect to an employer's right of appeal from an order of a Rhode Island Superior *Court* modifying its own decree. It did not involve, either directly or indirectly, the effect of a decision of the Rhode Island Director of Labor.

In short, the petitioner has failed to produce any decision of the Rhode Island court which can fairly be said to support its construction of the Rhode Island act, and this respondent knows of none.

Conclusion

Since this case presents neither an undecided federal question nor a decision inconsistent with the applicable decisions of this Court, the petition for writ of certiorari should be denied.

Respectfully submitted,

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